

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1-7 and 9-37 are currently pending in the application of which claims 1, 13, 19, 24, 30 and 35 are independent. Claim 8 is canceled herein. Claims 13-18 and 30-34 were withdrawn. Claims 1-12, 19-29 and 35-37 were rejected.

Summary of the Office Action

Claim 26 recites the limitation the multicast tree in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 1, 6, 12, 24 and 35 were rejected under 35 U.S.C. §102(b) as being anticipated by Hahn et al (2002/0152293), referred to as Hahn.

Claims 2-5 and 25-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Aggarwal (2004/0221154).

Claims 7-9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Busche (5,805,593).

Claims 10-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Kumar (2005/0122904).

Claims 19-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Oom Temudo de Castro et al (2005/0030904), referred to as Oom Temudo de Castro.

Claims 28, 29, 35, and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Busche and further in view of Aggarwal.

Drawings

The Office Action did not indicate whether the formal drawings filed with the application are accepted. Indication of acceptance of the drawings is requested.

Information Disclosure Statement

The indication that the documents cited in the Information Disclosure Statement submitted on March 11, 2004 have been considered is hereby acknowledged with appreciation.

Claim Rejection Under 35 U.S.C. §112

Claim 26 recites the limitation the multicast tree in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 26 is amended to overcome the rejection.

Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 6, 12, 24 and 35 were rejected under 35 U.S.C. §102(b) as being anticipated by Hahn et al (2002/0152293), referred to as Hahn.

- Claims 1, 6, 12, 24 and 35

Independent claim 1 is amended to recite the features of claim 8. Claim 1 recites, the searching further includes searching the stored information to identify a plurality of service nodes operable to provide the requested service in response to a service path not existing that is operable to provide the requested service.

The rejection of claim 8 asserts this feature is disclosed by Busche in column 2, lines 40-50. Busche discloses a set-up procedure for setting up a service between an origination node and a destination node. Each node maintains a topological database of the network topology. The originating node sends a set-up message to a neighboring node. The neighboring node selects a shortest path to the destination node by eliminating links connected to nodes that have indicated a failure. Then, the neighboring node sends a set-up message its neighboring node on the shortest path, and the steps are repeated at that node. Thus, Busche does not determine a path does not exist, and in response to the path not

existing, searching the stored information to identify a plurality of service nodes operable to provide the requested service. Instead, Busche simply eliminates links in the network for failed nodes, and selects a shortest path without those links. In Busche, the path does exist, which is the shortest path selected by the neighboring node.

Furthermore, Busche does not disclose identifying a plurality of service nodes operable to provide the requested service in response to a service path not existing. Instead, Busche discloses identifying different paths to the same service node, rather than identifying multiple service nodes operable to provide the service, in response to eliminating links for failed nodes.

Dependent claims 6 and 12 are believed to be allowable at least for the reasons claim 1 is believed to be allowable.

Independent claims 24 and 35 have been amended to include features similar to claim 1 described above, which are not taught or suggested by Hahn and Busche.

For at least these reasons claims 1, 6, 19, 24 and 35 are believed to be allowable.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter

sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 2-5 and 25-27**

Claims 2-5 and 25-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Aggarwal.

Aggarwal fails to teach or suggest the features of independent claims 1 and 24 described above. Accordingly, claims 2-5 and 25-27 are believed to be allowable.

- **Claims 7-9**

Claims 7-9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Busche.

Dependent claim 7 recites,

searching the stored information to determine whether a service path exists that is operable to provide the requested service and is within a predetermined distance to a node requesting the service.

The rejection alleges Busche discloses this feature in column 6, lines 1-5. In this passage Busche discloses that it does not store predetermined distances. Thus, Busche fails to teach or suggest determining whether a service path or service node is within a predetermined distance to a node requesting the service.

Claim 8 is canceled.

Claim 9 is believed to be allowable at least for the reason claim 1 is believed to be allowable.

- **Claims 10-11**

Claims 10-11 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Kumar. Kumar fails to teach or suggest the features of claim 1 described above. Thus, claims 10-11 are believed to be allowable at least for the reason claim 1 is believed to be allowable.

- **Claims 19-23**

Claims 19-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Oom Temudo de Castro.

Independent claim 19 is amended to recite, "the at least one local landmark node is on a routing path to one of the global landmark nodes." Oom Temudo de Castro fails to teach or suggest both local and global landmark nodes, and fails to teach or suggest a local landmark node on a path to a global landmark node. Support for these features is provided on page 12, lines 6-12. Thus, claims 19-23 are believed to be allowable.

- **Claims 28, 29, 35, and 36**

Claims 28, 29, 35, and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hahn in view of Busche and further in view of Aggarwal. These claims are believed to be allowable for at least the reasons their respective independent claims are believed to be allowable.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: June 23, 2009

By



Askok K. Manava
Registration No. 45,301
(703) 652-3822

MANNAVA & KANG, P.C.
11240 Waples Mill Road
Suite 300
Fairfax, VA 22030
(703) 865-5150 (facsimile)